



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Robert E. Shaddock
General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR95-1460

Dear Mr. Shaddock:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your requests ID#s 25886, 26757, 26359, 26415, and 32933.

The Texas Department of Transportation (the "department") has received several requests for information relating to an audit of department travel records. The requestors seek, among other things, "copies of the Department of Transportation's internal audit into the travel records of former commissioner Henry Munoz and the department's Office of International Relations [IRO]," "any computer records of IRO employee Joel Alan, including but not limited to his private business records and diary kept on a state computer," and copies of statements collected from department employees in connection with the audit. You advise us that the department has released some of the requested information, including the requested audit. You object to releasing the remaining information, however, and claim that sections 552.101, 552.102, and 552.103 of the Government Code except it from required public disclosure.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. *See generally* Open Records Decision No. 551 (1990). We understand that the department has furnished a copy of the audit report to the Travis County District Attorney's Public Integrity Unit (the "district attorney"). The department has forwarded to this office a letter from the district attorney requesting that no records be released pending a criminal investigation into the actions of various department employees. You have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). *See* Open Records Decision Nos. 469 (1987) (concluding that a state agency may withhold under the predecessor to section 552.103 records relating to an investigation of possible criminal activity if the district attorney determines that the records should not be released); 121 (1976) (same). The department may therefore withhold the requested records. *See* Open Records Decision No. 281 (1981) at 1-2.

In reaching this conclusion, however, we assume that the opposing parties to the anticipated litigation have not previously had access to the records at issue. Absent special circumstances, once all parties to the litigation have obtained information through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982) at 2, 320 at 1 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestors pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has concluded. *See* Open Records Decision No. 350 (1982) at 3. As we conclude that section 552.103(a) applies to the requested information, we need not consider at this time the arguments you have made concerning the applicability of sections 552.101 and 552.102 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/GCK/rho

Ref.: ID#s 25886, 26757, 26359, 26415, and 32933

Enclosures: Submitted documents

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